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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 346

STONEWALL COTTON MILLS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 226–231)[1] and its opinion on the Board's petition for rehearing (R. 253–254) are reported at 129 F. (2d) 629. The findings of fact, conclusions of law, and order of the

[1] The printed record for purposes of the petition for certiorari consists of: (1) the printed "transcript of record" in the court below, containing the complaint, decision of the Board and other papers, and appended opinions of the court below together with the Board's petition for rehearing, which is referred to herein by the symbol (R.); and (2) the printed appendix to the Board's brief in the court below, which is referred to herein by the symbol (B. A.).

National Labor Relations Board (R. 158–218) are reported at 36 N. L. R. B. 240.

JURISDICTION

The decree of the court below (R. 255–257) was entered on August 1, 1942. The petition for a writ of certiorari was filed on August 28, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's findings that petitioner had interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act, had refused to bargain collectively in violation of Section 8 (5) and (1) of the Act, and had discriminatorily discharged one W. A. Taylor in violation of Section 8 (3) and (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix.

STATEMENT

Upon charges filed by Textile Workers Federal Local Union 21723, affiliated with the American Federation of Labor (R. 22–24), hereinafter called the Union, and after the usual proceedings, the

Board, on October 20, 1941, issued its findings of fact, conclusions of law, and order (R. 158–218). The facts, as found by the Board and as shown by the evidence, may be summarized as follows:[2]

In August 1938 the Union began an organizing campaign among petitioner's employees, and notices of an open meeting were posted (R. 165; B. A. 244, 44–46). Upon learning of the scheduled meeting, petitioner's secretary telephoned its plant manager, B. F. Berman, who suggested that if petitioner's attorney approved, some "friends" of petitioner arrange to be present at the meeting to remind the employees of certain unrealized promises made by organizers during a previous campaign in 1934 (R. 165; B. A. 244–246, 248). Petitioner's superintendent thereafter made efforts to have employees attend the meeting (R. 166; B. A. 247–249).

Shortly after the meeting, certain of petitioner's supervisory employees engaged in coercive conduct. Petitioner's night superintendent inquired of one employee "Don't you know that Mr. Berman would fire you and run you off from here for joining the union?" and added that "he will shut this mill down and let the weeds grow up as high as a hill before he will recognize a union" (R. 167; B. A. 90). Another supervisor (R. 167; B. A. 10) told an employee that he "had better get out of

[2] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

that mess [the Union] and stay out of it or the Stonewall Cotton Mills [would] shut down and starve [its employees] to death" (R. 167; B. A. 11). Later, in 1939, an overseer told an employee "You are talking about this damned union a whole lot. I am going to fire you and run you off from here, if you don't stop it" (R. 170; B. A. 96–97). Another employee was warned by supervisors not to associate with the Union leaders under penalty of discharge (R. 170; B. A. 389, 390, 46), and other coercive statements were made by persons in positions of authority (R. 172, 173; B. A. 129–131, 135, 136–137, 382).

By November 1938 the Union represented a majority of the employees (B. A. 46–47) and a conference was arranged with petitioner's president, Oscar Berman. He informed the committee that he had not signed a union contract in 30 years and would have to shut the mill down if he departed from that policy (R. 168; B. A. 53, 127–128); he refused to receive a copy of a proposed contract which the committee tendered on the following day and repeated his refusal to sign an agreement (R. 168; B. A. 54–56). At a meeting between the committee and Harrington, petitioner's secretary, in December 1938, Harrington stated that while he was opposed to a union, he would be in favor of a company union. He asked "Why don't you let this thing [the Union] alone" (R. 168–169; B. A.

57–58, 139–140), and also refused to receive a copy of the proposed agreement (B. A. 58–59).

At the November meeting, President Berman had promised to meet the Union committee in January 1939 (R. 168; B. A. 53); he did not fulfill that promise and ignored a request for a conference made by the Union in February (R. 169; B. A. 59–60). A meeting was finally held in April; for the first time Berman raised a question as to the Union's majority status [3] (R. 169; B. A. 62–63, 66). The Union proposed that its membership records be checked by a Board representative but Berman declined (B. A. 63); he also refused to consent to an election to be held by Board representatives on the ground that Board representatives did not agree to allow petitioner to electioneer against the Union (R. 170; B. A. 65). Formal proceedings under Section 9 of the Act were instituted, and an election was held by direction of the Board in November 1939. The Union won by a substantial majority and was certified as exclusive bargaining representative of petitioner's employees (R. 176; B. A. 393–394).[4]

[3] On the day following this meeting at which Berman questioned the Union's majority, W. A. Taylor, the leader of the Union, was discharged under circumstances which the Board found to be discriminatory (R. 194–199). See *infra*, pp. 8–9.

[4] Prior to the election, Manager Berman caused notices to be posted, which, the Board found, were designed to influence the election results (R. 171–172; B. A. 391–393). The notice announced that the results of the election would not change the minimum wages provided by law (R. 171; B. A.

In January 1940 the Union arranged a meeting with petitioner at which the Union presented its proposals. Manager Berman promised to submit a counterproposal at the next meeting (R. 177–178; B. A. 144–150, 395–401). But at the following conference, Berman produced no counterproposal; instead, he confined himself simply to a rejection of each item in the Union's proposed agreement (R. 178–179; B. A. 152–156). The Board found that certain of the grounds for rejection of the Union proposals were spurious (R. 188); for example, Berman denied the request for a closed-shop agreement on the ground that it violated the employees' "constitutional rights" not to join a union (R. 178; B. A. 154, 360) although petitioner's parent corporation, of which Berman was also an official, operated under a closed-shop agreement (R. 168, 178; B. A. 369–370). At another conference during January, at which a representative of the Conciliation Service was present, petitioner failed to produce a counterproposal, though the Union steadily

392). It also stated that the issue in the election was whether the employees desired to be represented by the Union or to "continue [the] present method of being able to speak for [themselves] in [regard to terms and conditions of employment] with [their] overseer, superintendent and any other company officials" (R. 171; B. A. 391–392). The Board found that in the light of petitioner's repeatedly announced hostility to the Union, the employees necessarily understood the notice to mean that petitioner desired them to vote for "the present method" of individual bargaining and against the Union (R. 172).

yielded ground on its demands (R. 179–180; B. A. 156–160). In March, in a letter to the Board, petitioner stated that it would not "commit itself to the signing of a collective-bargaining agreement" but would "negotiate a verbal agreement" (R. 180; B. A. 402), a statement which petitioner also made at a further meeting with the Union about the same time (R. 180; B. A. 162–163). At the same meeting petitioner proposed that all wages be reduced to the minimum allowable under the Fair Labor Standards Act (R. 180–181; B. A. 167–168).

Petitioner finally presented the promised counterproposal in May 1940, about a year and a half after negotiations had begun, some six months after the Union had prevailed in the election, and four months after promising its submission. The counterproposal proposed the exclusion of some 40 to 50 percent of the Union members from its coverage (R. 183; B. A. 180), thus challenging the unit which the Board had found to be appropriate for collective-bargaining purposes (R. 175, 191–192; B. A. 393), and provided that the excluded employees should not be eligible to membership in the Union or solicited to join it (R. 183; B. A. 408). Petitioner reserved the right to cancel the entire agreement on 10 days' notice (R. 182, 191; B. A. 411) and the proposal emphasized that it merely embodied petitioner's "present policy" (R. 182; B. A. 407–411), thereby, as the Board found (R.

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191–192), attempting to convince the employees that their Union membership was futile. The counterproposal forbade solicitation of members on company property (R. 183; B. A. 408), although petitioner owns all private property in Stonewall (R. 164, 183, 191; B. A. 338–342, 333–336). The counterproposal omitted all reference to a grievance procedure, arbitration, vacations, and other matters which the Union proposals had covered (R. 183, 191; B. A. 408–411). Further conferences, including one after the hearing in this case had started, were fruitless, despite further concessions by the Union, because of petitioner's adamant position on most matters (R. 183–186, 192–193; B. A. 186–239, 342–378, 395–398, 403–406, 416–419).

W. A. Taylor was senior in point of service among petitioner's three roving haulers (R. 195; B. A. 256); he had been employed at intervals for five years prior to his lay-off in April 1939 (R. 194; B. A. 41–43). He was the leader in the Union's creation and development; the Union charter was installed in a ceremony held at his home (R. 195; B. A. 45) and he was secretary of the Union and present at all bargaining negotiations with petitioner prior to his lay-off (R. 195; B. A. 46, 48, 51, 57, 61). In December 1939, subsequent to his lay-off, he became president of the Union (B. A. 70). His Union activities aroused petitioner's opposition; petitioner's secretary, Harrington, characterized him in December 1939 as an "agitator" and "troublemaker" (R. 172, 195; B. A. 129–131, 135)

and two supervisors warned an employee in October 1939 that he would be discharged if he associated with Taylor (R. 170, 195; B. A. 389, 390, 46). Taylor's lay-off occurred on April 27, 1939 (R. 195; B. A. 67), one day after the conference at which President Berman for the first time questioned the Union's majority status (*supra*, p. 5). The two junior roving haulers were retained (R. 195; B. A. 253).

The Board rejected petitioner's contention that Taylor was laid off because his work was unsatisfactory; his immediate supervisors had not complained about his work (R. 196–198; B. A. 80, 262, 386, 243, 250–251) and his overseer told him that his work had not been unsatisfactory (R. 196; B. A. 72). He applied for reinstatement in June 1939 and was told that his job was to be given to another (R. 196; B. A. 71–72); when Taylor inquired "what is the matter with me?" his overseer answered "I don't know * * * you [have been] dealt out" R. 196; B. A. 72). Further applications were unsuccessful (R. 196; B. A. 73–75),[5] though other roving haulers were hired subsequent to his lay-off (B. A. 253–256).[6]

[5] There was also testimony that, upon making one such application in July 1939, Taylor was told by petitioner's superintendent, "Taylor, the only thing I can tell you is the reason you are not working is on account of your union actions" (B. A. 75). The Board made no finding concerning this evidence.

[6] The Board also found that in November 1939 petitioner discriminatorily discharged an employee, C. A. Holliman,

The Board upon the entire record concluded (R. 214–216) that petitioner had interfered with, restrained and coerced its employees in violation of Section 8 (1), had refused to bargain collectively with the Union in violation of Section 8 (5) and (1), and had illegally discriminated against Taylor, Holliman, and Logan, in violation of Section 8 (3) and (1). By way of reparation, in addition to the usual cease-and-desist provisions, it directed petitioner to bargain collectively with the Union, to reinstate the three employees with back pay, and to post the usual notices (R. 216–218).

Thereafter petitioner filed a petition to review in the court below (R. 1–12), and the Board answered requesting enforcement (R. 14–20). In its opinion of June 3, 1942 (R. 226–231), the court below enforced the provisions of the order except those relating to the three discharges, which were set aside. On the Board's petition for rehearing (R. 233–252), the court on July 6, 1942 (R. 253–255) reinstated the order as to Taylor but, in our view erroneously, declined to enforce the order as

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and in January 1940 discriminatorily discharged another employee, Hill Logan, because of their union membership and activity (R. 199–207, 207–212). The court below held that these findings were not supported by substantial evidence and set them aside (R. 230–231, 254). Although we do not agree with the holding of the court below on this branch of the case, we do not believe that the issues raised by the holding are of sufficient importance to warrant our seeking further review by this Court.

to Holliman and Logan.[7] A decree was entered accordingly on August 1, 1942 (R. 255–257).

ARGUMENT

The petition should be denied. The Board's finding that petitioner violated Section 8 (1) of the Act is supported by substantial evidence of clearly coercive conduct including, among other things, threats of discharge for joining the Union or associating with its leaders, *supra*, pp. 3–4, and warnings that the plant would be shut down if the employees organized a union, *id.*, or if petitioner were required to sign a union contract, *supra*, p. 4; and by petitioner's refusal to bargain collectively with the Union (*National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 433) and its discriminatory discharge of Taylor. Since the statements made were clearly coercive on their face, no question is presented under the First Amendment, *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, particularly since the Board's finding of violation of Section 8 (1) rests on petitioner's "whole course of conduct" (*id.* at p. 479; R. 174, 215).

The finding that petitioner refused to bargain collectively in good faith is supported by its failure to submit counterproposals within a reasonable time, as promised, its express refusal to sign an agreement that might be reached, its suggestion

[7] See *supra*, note 6.

that all wages be reduced to the statutory minimum, its unwillingness to contract for any reasonable period of time, its discharge of a Union leader during negotiations (cf. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 437), and its proposals that a large number of the employees within the apropriate unit be excluded from the contract and be required to relinquish their union activity (*supra*, pp. 6–8, 10). *Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 526; cf. *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 360.

The finding that Taylor was discriminatorily discharged is adequately supported by petitioner's demonstrated hostility to the Union, its knowledge of, and opposition to, Taylor's activity, the timing of his lay-off, the failure to rehire him, and the fact that his lay-off occurred out of the order of seniority for an asserted reason which the Board on adequate evidence found to be specious (*supra*, pp. 8–9). The inference of discrimination is, on these facts, entirely warranted. *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 602. The cases cited by petitioner in which the circuit courts of appeals have held Board orders not supported by substantial evidence turned, of course, on their facts and do not show a conflict.

CONCLUSION

The decision below, in so far as it sustained the Board's findings and order, is correct and presents neither a conflict of decisions nor any question of general importance. The petition should therefore be denied.

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